

SAUL EWING
ARNSTEIN
& LEHR LLP

Charles M. Lizza
Phone: (973) 286-6715
Fax: (973) 286-6815
clizza@saul.com
www.saul.com

November 2, 2022

VIA ECF

The Honorable Madeline Cox Arleo, U.S.D.J.
King Fed. Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: *Alkermes, Inc., et al. v. Teva Pharmaceuticals USA, Inc.*
Civil Action No. 20-12470 (MCA)(MAH)

Dear Judge Arleo:

This firm, together with Paul Hastings LLP, represents plaintiffs Alkermes, Inc. and Alkermes Pharma Ireland Limited (together, “Alkermes”) in the above-captioned matter. Yesterday, the parties filed their pretrial briefs. Teva filed a declaration that attached certain deposition testimony. D.I. 182, Exhs. 1-5. We write to preserve our objections to the deposition submissions and respectfully request that they be disregarded for the following reasons:

First, two of the witnesses (Drs. Elliot Ehrlich and Roger D. Weiss, D.I. 182, Exhibits 4-5) will testify live at trial as stated in the Final Pretrial Order. (D.I. 165, Tab 8.) Their deposition testimony is inadmissible. (Fed. R. Evid. 801; Fed. R. Civ. P. 32.) As such, the parties made no designations of this testimony in the Final Pretrial Order. (D.I. 165, Ex. B.)

Second, although the other two witnesses (James H. Kerrigan and Raymond Bartus, D.I. 182, Exhibits 1-3) will testify by deposition, Teva omitted the counter-designations, rendering the presentation incomplete and contrary to the requirements of the Final Pretrial Order: “[A]ll deposition designations for a witness will be played at one time during trial in chronological order.” (D.I. 165 at 209; *see also* Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6) (rules of completeness).)

For the foregoing reasons, Alkermes respectfully requests that D.I. 182, Exhibits 1-5, be disregarded so the record for trial, and any potential appeals, including any submissions of deposition testimony, is made in a proper, orderly, and complete manner, in compliance with the Final Pretrial Order, Federal Rules of Evidence, and Federal Rules of Civil Procedure.


Hon. Madeline Cox Arleo, U.S.D.J.

November 2, 2022

Page 2

Thank you for Your Honor's kind attention to this matter.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Charles M. Lizza". The signature is fluid and cursive, with a large initial "C" and a stylized "Lizza".

Charles M. Lizza

cc: All Counsel (via email)